

UNTAG Law Review (ULREV)

Volume 4, Issue 1, May 2020, PP 1 - 19

ISSN 2549-4910 (online) & ISSN 2579-5279 (print)

<http://jurnal.untagsmg.ac.id/indeks.php/ulrev/indeks>www.fakhukum.untagsmg.ac.id

CHALLENGES AND POTENTIALS OF WAQF IN CONTEMPORARY INDONESIA**USWATUN HASANAH, HERU SUSETYO**

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ABSTRACT : Waqf, as an instrument of the Islamic Economy, has been developed in a quite long period. Since the Prophet Muhammad PBUH era up to present. Indonesian people have also recognized waqf much long before Indonesian independence in 1945. Yet, the institutionalization of waqf into national law is less than five decades in Indonesia. As the most predominantly Muslim country in the world, most of the people recognize waqf only as a land donated in the name of Allah for building masjids, schools (madrasah) or cemeteries. Whereas, at The Law No. 41/ 2004 on Waqf, waqf is not limited to immovable goods but also movable assets. And, the utilization of waqf is not limited to build masjids and madrasah, but also for other purposes that related to public welfare. This article discusses the challenges and potentials of waqf in contemporary Indonesia.

Keywords: waqf, challenges, potentiality, Indonesia

INTRODUCTION

Waqf is one Islamic institution that is closely associated with the social and economic problems of society. Unfortunately, in Indonesia, these institutions are not developed productively, so that although the number of donated land in Indonesia is quite a lot, it is still hard to find objects of waqf that could actually develop the local economy, even the charitable purposes often burden the society. The condition may be attributable to various factors, one of which because of the limitations of people's understanding of the waqf issues, especially the waqif and nazhir waqf.

At the moment, there is still quite a lot of Nazhir waqf in Indonesia who do not understand very well their duties, obligations, and rights. It does not mean that in Indonesia there is no nazhir waqf who could develop waqf in a productive manner because there are also Nazhir who are already capable of managing waqf productively, for example, Badan Wakaf Universitas Indonesia, Yayasan Badan Wakaf Sultan Agung, Yayasan Pemeliharaan dan Perluasan Wakaf Pondok Modern Gontor, and others. Upon the enactment of Law No. 41 of 2004 concerning Waqf and the Government Regulation No. 42 of 2006 concerning the implementation of Law

No. 41 of 2004, and the Indonesian *Waqf* Board, it is expected to enhance the capability of *nazhirwaqf* so that they can manage *waqf* productively and professionally.

Thus, the results can be used to solve various social and economic problems in the society. Of course, the success of *waqf* does not entirely depend on the *nazhirwaqf*, but also all elements in *waqf*, namely *waqif*, *mauqufbih*, and *mauquf 'alaih*. Therefore, for *waqf* in Indonesia to be advanced and developed, the Islamic community in Indonesia, especially *waqif* and *Nazhirwaqf*, should understand the *waqf* issues properly.

Nazhir capacity, the ignorance of the ordinary people, lack of *waqf* regulation are among the challenges of *waqf* in Indonesia. Whereas, the potentiality of *waqf* in Indonesia is enormous. As a predominantly Muslim country and the 15th largest country in the world (area), the *waqf* development in Indonesia is promising. This article discusses the challenges and potentiality of *waqf* in Indonesia, particularly in the aftermath of Law No. 41/2004 on *waqf*.

DISCUSSION

A. Economic Philosophy Principle

As already stated in the preceding, *waqf* is one of the Islamic economic institutions with the potential to be developed. For someone to understand this *waqf* issue well, before understanding the history and the law, it would be better if one follows the Islamic economic philosophy well and correctly.

By following the economic philosophy of Islam well, it is expected that the parties associated with *waqf*, especially *nazhir* can perform their tasks and obligations properly. Also, if the *waqif* and their family members understand the substance of *waqf*, they will not revoke the property that has donated as *waqf*, they may even be interested in giving. As already known, *waqf* is retaining ownership that can be taken advantage of without spending or damaging the object (*'ain*) and used for good. Thus for the property that has been donated as *waqf*, the ownership is stopped. *Waqif* and his family should not inherit, sell, and grant the same. But in reality, there is quite a lot of cases in the field whereby the heirs want to control the property that has been donated as *waqf* by *waqif*. The writer believes, if each people associated with *waqf* has a good understanding of the *waqf* issues, no one will dare to commit fraud against the *waqf*.

Islam views people as one family. Therefore each human being is equal before Allah. To realize such kinship and togetherness, there must be cooperation and mutual help. The concept of brotherhood and fair treatment of all members of society is meaningless if not accompanied by economic justice that allows each person to obtain rights to contribute to the community.

1 Muhammad ibn. Isma'il as-San'any, Subul as-Salam, (Mesir: Muhammad Ali Sabih, t.t.), Juz III, p. 114

With the typical and deep Islamic commitment toward brotherhood, social and economic justice, then injustice in income and wealth is contrary to Islam. However, the concept of Islamic justice in the distribution of income and wealth, as well as its conception of social justice, does not demand that everyone should receive equal pay regardless of their contribution to the society. Islam is tolerant of income inequality to a certain extent because everyone is not the same by nature, capabilities, and services in the community.

In the Islamic concept, the absolute title is not in the hands of man, but the hands of Allah. Human ownership of goods and services is only relative. In such a position, he would have had to use his property in harmony and in accordance with the instructions of Allah, who is the absolute owner of his property. Therefore, so that people can conduct their economic activities accurately, it must be based on the principles of Islamic economic philosophy.

According to A.M. Saefuddin, who quoted MonzerKahaf, there are three principles of Islamic economic philosophy, namely: (1) All existing in the universe, heavens, earth, and natural resources available to him; even human-controlled wealth are the properties of Allah because he is the one who has created them. Man as His caliph is only entitled to manage and utilize them under Allah's will and conditions; (2) Allah Almighty. He is the creator of all beings in the universe. One of Allah's creatures is man, who has been given perfect fittings over other creatures so that he can carry out his duties, obligations, and rights as the caliph of God on earth. To be able to perform their functions, humans must help one another and work together, especially in the conduct of economic activities; (3) Faith in the Resurrection or judgment day. The faith in doomsday is an essential principle in the Islamic financial system, as with such faith, people's economic behavior in the world will be under control because he realized that all of his actions, including his economic behavior, he should be accountable before God.²

These three fundamental values then give birth to the basic values, namely (1) the significant amount of ownership. In the teachings of Islam (a) property is not controlled over economic resources, but the ability to use them. Also, according to the Islamic Economic System, (b) the duration of people's ownership over something is limited only to the period of their life in this world. When one dies, the wealth should be distributed to his heirs according to the provisions that have been established by Allah, (c) natural resources that concern with the livelihood of the people should be the common property or controlled by the state for public use. The second essential value is balance. The balance is the significant value that affects various aspects of the economic behavior of a Muslim.

The principle of balance is, for example, embodied in the simplicity, thrift, avoid wastefulness.

2 *Ibid.*, page 19.

Also, there should be a balance between rights and obligations. The third is the underlying value of justice. According to Sri Edi Swasono, justice in Islam is a point of departure, as well as the process and purpose of all human activities. In this relation, it should be noted that (a) justice must be applied in all areas of economic life. Besides, (b) justice also means wisdom in allocating some results of financial activities for the people who are not able to enter the market through zakat, infaq, sadaqah, and others. These three fundamental values that gave birth to five grades instrumental Islamic Economic System,³ namely zakat, the prohibition of usury, economic cooperation, social security, and the role of the state.

The primary concern of the Islamic Economic System is the relationship between humans and objects and human power over things in the vicinity. Regarding the relationship of humans and objects or one's title over his property, it should be noted the following matters:⁴

B. The Development of Waqf in Indonesia

Waqf is one of the Islamic economic institutions significantly potential to be developed in Indonesia. Unfortunately, such a very strategic institution to improve the welfare of the poor people (dhu'afa) has since the beginning not received adequate attention from government, practitioners, academics, and the community. It was not until the year 2001 that the discourse on the development of productive waqf emerged in Indonesia, with the start of several studies of waqf, whether conducted in universities, in the form of a thesis, or dissertation, or various seminars and workshops conducted by the government, Islam Organizations, and Non-Governmental Organizations. As a country with an estimated 36 million poor people and 10 million unemployed, it is appropriate for the Republic of Indonesia with majority Muslim to develop waqf institutions productively.

Thank God, at this point, Muslims in Indonesia have agreed to create a productive waqf. It is marked by the passing of Law No. 41 of 2004 concerning Waqf, and Government Regulation No. 42 of 2006 concerning the implementation of Law No. 41 of 2004 concerning Waqf as well as the establishment of Indonesian Waqf Board (Badan Wakaf Indonesia). Thus, Muslims have a strong legal foundation for developing waqf, both waqf of immovable and movable goods. From the historical point of view, waqf as one of the Islamic institutions is estimated to have been implemented by Indonesian Muslims since Islam arrived in Indonesia. Thus waqf has already institutionalized in the Muslim community in Indonesia. Some Muslims have previously perceived the advantages of waqf property. Waqf properties in Indonesia are generally in the form of mosques, school buildings, hospitals, cemeteries, public roads,

3 *Ibid.*, page 65.

4 Mohammad Daud Ali, *Ekonomi Islam, Zakat dan Wakaf* (Jakarta: UI-Press, 1988), page. 21-23.

orphanages, markets, and others.

Unfortunately, such *waqf* properties are not managed productively, so that *waqf* in Indonesia has not been able to bring prosperity to Muslims in particular, and also the society in general. Frequently its presence also creates new problems, such as the need for funds to maintain *waqf*. To overcome the issue of the funds needed in the maintenance of *waqf* properties, some management of *waqf* seek charitable funds from the *waqf* properties themselves, and some are seeking funding from other sources such as *zakat*, *infaq*, or *sadaqah*. In addition to the funding problems, there are still some issues that emerge from these *waqf* institutions, such as the *waqf* land controlled by *Nazhir*, or withdrawn by the heirs of the *waqif*. The emergence of such *waqf* issues has attracted the attention of scientists to examine the practice of *waqf* in Indonesia.

Nevertheless, in the development lately has been quite a lot of possessions of *waqf* managed productively, both movable and immovable objects of *waqf*. Although the *waqf* institutions are from the teachings of Islam, some sort of charitable organizations existed before Islam arrived in Indonesia. In Indonesia, many custom properties are similar to *waqf*. Institutionally, there are similarities between traditional features with *waqf*, although according to the Islamic jurisprudence (*fiqh*), it is clear that custom properties are not *waqf*. This kind of properties similar to *waqf* in Indonesia, is in terms of practices that prevail in society.

Almost every region has land utilized for the benefits of the family and the public interest. For example, in Banten, there is "*Huma Serang*." *Huma* is a field commonly undertaken every year, and the proceeds are used for the common good. In Bali, there is also a sort of *waqf* organization in the form of land and other items such as jewelry for a party that belongs to the temple or the gods who live in Bali. In Lombok, there is also customary land called "*Tanah pareman*", namely state lands that are exempted from "*Landrente*" tax handed to the villages, Subak, and also to the temple for common interests.⁵ In East Java, there is also a "*Perdikan*" land. *Perdikan* is a tract of land which is the provision of a king to a person or group of people in the village who had been instrumental to the king or to the state.

According to Rachmat Djatnika, this form almost similar to *ahliwaqf* in terms of land use functions made as an object. As for the "*Pusaka*," it is a treasure given by the ancestors for the benefit of family members as a whole, not tradable and cannot be inherited individually. This form is almost similar to the *ahliwaqf*. Even the "*Sima*" that existed in the Hindu-Buddhist era in Java in the form of parts of forest given by a king to a person or group of people to take the proceeds was also about the same as *ahliwaqf*.⁶

5 Abdurrahman, *Masalah Perwakafan Tanah Milik dan Kedudukan Tanah Wakaf di Negara Kita*, (Bandung: Penerbit Alumni, 1979), page. 14

6 Rachmat Djatnika, *Tanah Wakaf*, (Surabaya: Al-Ikhlas, t.t.), page. 12

The existence of several institutions that are similar to *waqf* before the arrival of Islam has posed a unique view for Indonesian legal experts toward *waqf* institutions. Although *waqf* institutions are derived from Islamic law, some Indonesian legal experts regard the *waqf* matters as matters of customary law matters in Indonesian. This is due to the pervasive acceptance of these charitable organizations in the Indonesian community and considered as a legal institution that arises as customary law. Therefore, in Indonesia, *waqf* institutions are not only known by the experts of Islamic law, but also by experts of customary law.⁷ TerHaar stated that *waqf* is an institution of the Islamic law that has been accepted in many parts of the archipelago.⁸

Among the Dutch legal experts, *waqf* was known as "*Vrome Stichting*." TerHaar also stated that a *waqf* is a particular act by nature because it has two sides. Viewed from one hand, it is a legal act that concerns with land or object, but when viewed from the other side, it is a legal entity entitled to participate in the life of the law as a result of the legal actions.⁹ An Indonesian legal expert, Mr. Dr. Koesoema Atmadja in 1922, prepared a dissertation on *waqf* institution under the title "*Mohammedaansche Vrome Stichtingen*." In the dissertation, Koesoema Atmadja formulated the definition of *waqf* as a legal act by which act an item/condition items has been incurred/taken its use in the original society, in the interests of a specific person/persons or so that the purpose/objective/goods already in the hands of those who died.¹⁰

Koesoema Atmadja's formulation is the notion of *waqf* in terms of customary law. Apparently, the understanding proposed by Koesoema Atmadja while it is not the same, but it is in line with the notion of *waqf* according to Islamic law, because of its utilization for others, both individuals and groups, and the possession regardless of the original owner. From the opinion of experts on customary law, it is clear that due to the process of *waqf*, the objects donated as *waqf* have been removed from the traffic of law, so that it is no longer possible to participate in the various transaction of law. The process of the transfer of the status of the goods has also caused change to the status from previously as an object of law into the legal subject with status as a legal entity according to customary law.¹¹

According to TerHaar, *waqf* can be divided into two kinds, first, *waqf* of housing land for the *masjid* or *mushalla* (if necessary added with agricultural lands the proceeds of which are intended for the maintenance of the *masjid* and make a living of the management, and coupled

7 Abdurrahman, *op.cit.*, page. 13

8 TerHaar Bzn, *Asas-asas dan Susunan Hukum Adat*, terjemahan K. Ng. Soebekti Poesponoto, (Jakarta: Pradnya Paramita, 1974), page. 161

9 *Ibid.*

10 Abdurrahman, *op.cit.*, page. 14

11 TerHaar Bzn, *loc.cit.*

with al-Quran to be used in the *masjid*); second, *waqf* of parts of wealth, which part cannot be transferred forever, for the children and grandchildren allowed to take the proceeds.¹² The division of *waqf*, as suggested by TerHaaris similar to the distribution of *waqf* under Islamic law. In Islam, there is a division of the form of *waqf*, namely *khairiwaqf* and *ahliwaqf*.

The requirements for *waqf*, according to Muslim legal experts and TerHaar are not much different. TerHaar suggested that the *waqf* maker should have the right and full power (reviewed in accordance with customary law) on goods donated as *waqf*; the goods must be clearly designated and may not be used against matters banned by the Islamic law; the purpose; (the *Halal* ones) must be described with express words, and as such even if the goal is not born, it is not obvious by itself; the purpose should be fixed; the receiver of *waqf* should be expressly designated and how could they claim to accept well the *waqf* (*qabul*). The *waqf* maker should determine the management by appointing the caretaker. If such caretaker does not exist, then the head of the *masjid* should, by law, take care of the same, it is the way in Java. If the creation of *waqf* has been duly implemented (for which usually a deed is drawn up), then the legal position of the goods is governed by customary law (by religious elements thereof); all measures to achieve its objectives is the obligation of the caretaker, as well as taking care of the case.¹³

Other similarities appear in the understanding or formulation of *waqf* according to customary law proposed by Hilman Hadikusumo. According to Hilman Hadikusumo, *waqf* is the giving, the provision of something of eternal substance, such as land, to be enjoyed and utilized for the benefit of society according to Islamic teachings.¹⁴ Such various similarities between the notion of *waqf* according to the custom and the definition of *waqf* under Islamic law show the close relationship between the customary law and Islamic law in Indonesia.

Although the Muslim scholars of Indonesia generally claimed as the follower of Shafi'i, in understanding the *waqf* issue, they may also accept the understanding of other schools. The interpretation of Muslims against religious matters cannot be separated from the tradition. This is to avoid disputes and obtain harmony, suitability, and alignment.¹⁵

The existence of social institutions similar to *waqf* in Indonesia has caused *waqf* institutions that come later can develop well, as indicated by the increasingly growing number of *waqf* in Indonesia. However, such a considerable amount of *waqf* in Indonesia was at first not accompanied by sufficient legislation, so that eventually the government realized to curb the *waqf* land in Indonesia. *Waqf*, as an Islamic institution that is closely associated with social

12 *Ibid.*

13 *Ibid.*, page. 161-162

14 Mohammad Daud Ali, op.cit., page. 95.

15 *Ibid.*, p. 94

issues and customs in Indonesia, often cause problems in society. It is therefore understandable if *waqf*, which was derived from the teachings of Islam, is also viewed by the legal experts in Indonesia as an issue of customary law. Thus the matter of *waqf* has since the first set in unwritten customary law to take away the source of Islamic law. In addition, the Colonial Government has also issued various regulations governing *waqf* issues.

As an institution that develops in the community, especially among the Muslims, from the Dutch colonial era, *waqf* has always received the attention of the government. This is because the Government expects that existing *waqf* is more orderly and do not give rise to disputes within the community.

The Government of the Republic of Indonesia also continued to recognize religious law on *waqf*. Still, intervention against *waqf* was merely in terms of investigating, determining, registering, and supervising the maintenance of *waqf* objects so that to fit the purpose and intent of *waqf*. The Government had no intention to interfere, control, or making the objects of *waqf* state-owned lands. The legal standing, competence, and tasks of taking care of *waqf* matters by the ministry of religious are based on the Government Regulation No. 33 of 1949 in conjunction with the Government Regulation No. 8 of 1980 and based on the Regulation of the Minister of Religion No. 9 and No. 10 of 1952.

Nevertheless, existing regulations are inadequate. Therefore, in order to reform the state Agrarian Law in Indonesia, the question of *waqf* of land given special attention as shown in the Basic Agrarian Law, namely Law No. 5 1960 on the basis of Regulation Agrarian, Chapter II, section XI, Article 49, as already cited in the introductory chapter. Article 49 paragraph (3) of Law No. 5 1960 clearly stated that to protect the course of *waqf* land in Indonesia, the government will provide the setting through Government Regulation on *Waqf* of title land. Government regulation is newly issued after 17 years of the enactment of the Basic Agrarian Law.

With the Government Regulation on *waqf* of property belonging to the *waqf* are expected to land in Indonesia more orderly and more awake. During the absence of government regulation on *waqf* land, in Indonesia, a lot going on *waqf* land issues that arise in the community. This does not mean that the government does not care about *waqf* problems. Still, because of the rules that existed before the issuance of Government Regulation on *waqf* inadequate, it was difficult to curb government donated land, which is quite a lot. *Waqf* is one of the growing Islamic institutions in Indonesia, which is generally in the form of properties, intimately linked to development.

The increasing growth in Indonesia needs good land to fulfill the housing needs of individuals as well as for the development of public infrastructures such as roads, markets, schools, sports

facilities, and industrial increase. Such conditions led to the public, and the government began to think of efforts to utilize existing land efficiently and prevent any wastage in the use of the property. The data of land use shows that there are maps with a picture of damaged land, especially in areas that are densely populated, and the status of the property is not the land of people who work on it.¹⁶

In Indonesia, government interference in the case *waqf* has a solid legal basis. In Act of 1945, Article 29 paragraph (1) under Chapter Religion stated that the state (Republic of Indonesia) based upon belief in one supreme God.

According to Hazairin, the basic norms mentioned in Article 29 paragraph (1) the interpretation of, among others, means that "the Republic of Indonesia" helps required for the implementation of Islamic Sharia, the Christians Sharia for Christians and Hindu Dharma Sharia for Hindu Dharma, if the implementation of sharia that requires the mediation of state power.¹⁷ State authorities are obliged to assist the implementation of Shari'ah each recognized religion in the Republic of Indonesia is the power of the State which is based on the Constitution of the Republic of Indonesia. This is caused by Shari'ah derived from the religious affiliations of citizens of the Republic of Indonesia. It is a necessity of a life of its adherents.¹⁸ In addition, Article 29 paragraph (2) of the 1945 Constitution clearly also mentioned that the state guarantees freedom of each population to embrace their religion and to worship according to religion and belief.

Through the lens of paragraph (1) and (2) Article 29 of the Act of 1945 is clear that the *waqf* is one form of worship to God that included worship is worship in the form submission Maliyah property (mal) owned by a person in the ways specified.¹⁹ *Waqf* is worship that involves the rights and interests of others, administration, and other aspects of people's lives. So that the rights and obligations, as well as the interests of a society of it, can run well, it is an obligation of the government to regulate the issue of *waqf* in the form of legislation. With the bill that orders in *waqf* practice, this can be realized to the benefit that can be perceived by the public. As an Islamic institution that is closely related to land issues, *waqf* in Indonesia is set the implementation with some legislation, both direct and indirect.

Through the Presidential Instruction No. 1 of 1991, dated June 10, 1991, has been set as a guideline for government agencies and the public who need to resolve the problems in all three

16 Soeprapto, "Perubahan Peruntukan/Penggunaan Tanah Wakaf dari Sudut Agraria," mimeo, *Makalah disampaikan Temu Wicara Perwakafan Tanah Milik*, Departemen Agama RI, (Jakarta, 19-20 September 1987), p. 4

17 Hazairin, *Demokrasi Pancasila*, (Jakarta: Bina Aksara, 1983), p. 34

18 *Ibid.*, p. 75

19 Muhammad Daud Ali, *op.cit.*, p. 98-99

areas of the law. Minister of Religious Affairs, as Vice President, in the decree number 154 of 1991 dated July 22, 1991, to implement the Presidential Instruction, asked all agencies of Religious Affairs, including the Religious Courts in it, and other related government agencies to spread the Law Compilation Islam is. In the second part, the Minister of Religious dictum concerning the implementation of Presidential Instruction was mentioned that the whole environment agencies to implement Islamic law Compilation alongside other legislation to resolve the problems in the field of law of marriage, inheritance, and *waqf*.²⁰

Although the *waqf* is organized with a variety of regulations, the expectations for the functioning of *waqf* as prescribed have not been met. Even still, many displaced *waqf* lands do not help people to realize the welfare, yet sometimes a burden on society. Based on this condition, many experts expect the *waqf* stipulated in the law.

As already known, that is stipulated in Government Regulation No. 28 of 1977 was only the social *waqf* (general *waqf*) on land owned by a person or legal entity and donated as *waqf* land in a government regulation that restricted land owned by it, while on land rights such as the right to cultivate, building rights and rights of use is not regulated. In addition, other objects such as money, securities, and others are also not regulated in Government Regulation. Therefore, the development of *waqf* in Indonesia is quite stilted. Then *waqf* in Indonesia also set in the Compilation of Islamic Law Book III of *waqf*. Various regulation is regarded by many as inadequate, so *waqf* need is regulated by the higher, the law governing *waqf*.

After going through a long process eventually, on October 27, 2004, President Susilo Bambang Yudhoyono ratified the Law of the Republic of Indonesia Number 41 of 2004 concerning *Waqf*. When compared with some of the legislation on existing *waqf* over the years, in the Law on *Waqf*, there are some new and important things. Some of them are about the problems *Nazhir*, property donated as *waqf* (*mauqufbih*), and the designation of *waqf* property (*mauquf 'alaih*), as well as the need to establish Indonesian *Waqf* Board. With regard to the issue *Nazhir*, because in this law administered not only immovable that has been commonly implemented in Indonesia, but also moving objects such as money, precious metals, securities, vehicles, intellectual property rights, lease rights, and others, then the *nazhir* supposedly able to manage these objects.

In this law, *waqf* property is not limited to the purpose is not moving, but also moving objects. In Article 16 (1) states that the *waqf* property comprises: Immovable and Movable. And the movable goods is not limited only to money but also to other assets.

20 *Ibid.*, p. 162-165

C. Challenges of Waqf in Contemporary Indonesia

In Waqf Law 2004, *waqf* of money is also regulated in a separate section. Article 28 of the Act states that *waqif* may donate as *waqf* moving objects in the form of cash through Islamic financial institution designated by the Minister. Then in Article 29 paragraph (1) is also mentioned that the *waqf* of objects moving in the form of cash, as referred to in Article 28, implemented by *waqif* with the statement that will be made in writing. In paragraph (2), the same article stated that the *waqf* of objects moving in the form of money referred to in subsection (1) should be issued in the form of certificates of *waqf* of cash. While in paragraph (3), the same article stipulated that the cash *waqf* certificate referred to in paragraph (2) shall be issued and delivered by financial institutions to *waqif* Shari'ah and *nazhir* as proof of delivery of *waqf* property. The provisions regarding the moving objects in the form of *waqf* of money will be further regulated by Government Regulation.

In Indonesia, the *waqf* of funds has not been long known and applied. In contrast to the *waqf* of land, implementation of cash *waqf* little bit complicated because the *waqf* process must involve Islamic financial institutions. The method of execution of this cash *waqf* expressly provided in Article 22 paragraph (3) of Government Regulation No. 42 of 2006 as follows: *Waqif* donating money that will be required to: a. The recipient is present in the Financial Institutions *Waqf* of Money (LKS-PWU) to express the will of *waqf* of money; b. explain the ownership and origin of the funds that will be donated as *waqf*; c. cash deposit some cash into LKS-PWU; d. *Waqif* fills out a declaration form which serves as the AIW. Then in paragraph (4) stated that in the present case cannot *Waqif* referred to in paragraph (3) letter a, then *Waqif* may appoint a representative or proxy. In paragraph (5), the same article mentioned that *Waqif* might declare the pledge *waqf* is moving objects in the form of money to *Nazhir* before PPAIW after this, the AIW *Nazhir* submit to the LKS-PWU.

Instead of *waqf* of cash, a new development of *waqf* presents a contemporary *waqf* scheme, namely cash *waqf* linked Sukuk. It is a form of social investment in Indonesia where endowments of money collected by the Indonesian Waqf Board as *Nazhir* through BNI Syariah and Bank Muamalat Indonesia as Sharia Financial Institutions for Recipient *Waqf* Money (LKSPWU) will be managed and placed on the State Sukuk instrument or SBSN (State Sharia Securities Country) issued by the Ministry of Finance. Cash *Waqf* Linked Sukuk (CWLS) involves five stakeholders, namely:²¹

Bank Indonesia, as an accelerator in encouraging the implementation of CWLS and Custodian Banks. Indonesian Waqf Board (BWI) as the regulator, leader, and *Nazhir* who manage

21 Please see <https://www.bwi.go.id/cash-waqf-linked-sukuk/> accessed on 17 April 2020.

CWLS. The Ministry of Finance as the SBSN issuer and fund manager in the real sector. Nazhir Wakaf Productive as a BWI Partner who raises endowment funds. Bank Syariah (Bank Muamalat Indonesia and BNI Syariah) as Sharia Financial Institutions that Receive Waqf Money (LKS-PWU) and Operational Bank BWI. To succeed in the development of the Sukuk Cash Waqf linked, the Ministry of Finance, together with Bank Indonesia, the Ministry of Religion, and the Indonesian Waqf Board, have compiled and signed an MoU that regulates policy and operational aspects in its development. The government will issue a special series "Sukuk Negara Sukuk" with unique features including a 3-year tenor, non-tradable nature, discounted payment of benefits, and a fixed rate of periodic payments.

The government will utilize the results of the issuance of the SW Series State Sukuk to finance the state budget, including to finance the construction of public service projects such as the construction of educational infrastructure and religious services.

There are still quite a lot of clauses relating to *waqf*, *waqf of money*, and *waqf* of other movables as well as to develop regulations. What matters how good way to implement Law Number 41 the Year 2004 on the *Waqf* in society. Based on the observations of the writer, at the moment, there are still quite a lot of people who do not understand do not even know the existence of Law Number 41 the Year 2004 on *Waqf*. Therefore, so that the legislation can be implemented properly in society, then there are some things that must be done: 1. Law No. 41 the Year 2004 on *Waqf* and Government Regulation No. 42 of 2006 on the implementation of Law No. 41 the Year 2004 on *Waqf* need to be socialized to the community; 2. The Nazhir *waqf* should understand the contents of the law properly. Thus they can perform the *nazhir* tasks as expected.

The management of *waqf*, particularly *waqf of money*, is not easy because in its development must go through a variety of business, and this business has a high enough risk. Therefore, the management and development of *waqf* objects, especially *waqf of money*, should be performed by a professional *nazhir*. Article 10 states that a person can only be *nazhir* if it meets the following requirements: a. Indonesian citizens; b. Muslim; c. Adult; d. Amanah (reliable); e. Capable of physically and mentally; and f. Not deterred legal actions. The *nazhir* tasks in the Law on *Waqf* mentioned in Article 11, namely: a. perform administration of *waqf* property; b. managing and developing the *waqf* property following the purpose, function and purpose; c. supervise and protect *waqf* property; d. report the execution of the tasks to the Indonesian *Waqf* Board (Badan Wakaf Indonesia).

Nazhir, besides meeting the requirements specified in the Act, in its implementation will, in order professional *nazhir* can work in managing *waqf*, then *nazhir* especially *Nazhir waqf of money* also must have the ability to support the duties and responsibilities. Thus, it is expected *Nazhir* really can develop *waqf* well, so that the *waqf* investment returns can be used to

empower communities. To get qualified *nazhir* above is certainly not easy, but it takes time. Therefore, to prepare cash *waqf* management and development, there should be institutions that are ready to conduct training for prospective *nazhir*. To manage and develop this *waqf*, *nazhir* needs special training. For it in Act 41 of 2004 concerning the need to establish *Waqf* mandated Indonesian *Waqf* Board.

With the issuance of Law No. 41 Year 2004 on *Waqf* and Government Regulation No. 42 of 2006 on the implementation of Law No. 41 Year 2004 on *Waqf*, expected *waqf* in Indonesia can develop well so that it can serve to improve the welfare of the community. In order *waqf* can thrive and flourish, we need a body specifically tasked and authorized to conduct training for the managers of *waqf* (*Nazhir*). In that respect, the Law on *Waqf* mentioned the need to establish the Indonesian *Waqf* Board (*Badan Wakaf Indonesia*). In Article 47 paragraph (1) of the Law about *Waqf* stated that to promote and develop national *waqf*, formed the Indonesian *Waqf* Board. Indonesian *Waqf* Board is located in the capital of the Republic of Indonesia. It can form a representative in the province and district/city under the requirements (Article 48). In Article 51, paragraph (1) stated that the Indonesian *Waqf* Board consists of the Executive Board and the Advisory Board. Membership Indonesian *Waqf* Board was appointed for a term of three (3) years and may be reappointed for 1 (one) term.

Article 57 paragraph (1) states that for the first appointment of the membership Indonesian *Waqf* Board proposed to the President by Minister (the Minister of Religion). Alhamdulillah, after going through a long process, in the end, the Minister of Religion of the Republic of Indonesia has succeeded in choosing candidates for members of the Indonesian *Waqf* Board to be proposed to the President. On July 13, 2007, Decree of the President of the Republic of Indonesia on the appointment of members of the Indonesian *Waqf* Board was signed by President Susilo Bambang Yudhoyono. The question of Muslims, in general, is the duty and authority of the Indonesian *Waqf* Board in *waqf* problem.

In many countries of which the *waqf* has well developed, in general, they have *Waqf* Board or institution level with the *Waqf* Board. We call it the example of Egypt, Saudi Arabia, Sudan, and others. In Egypt, for example, the *Waqf* Board has been established since 1971. The *Waqf* Board in Egypt under the Ministry *waqf* or *Wizaratul Auqaf*. The main task of the Egyptian *Waqf* Board is addressing the various issues and develop productive *waqf* following the legislation in force. Besides, the Egyptian *Waqf* Board is also obliged to investigate a troubling *waqf*, *waqf*, and distribute the results of carrying out all the activities that have been set. As a country with enough experience in dealing with *waqf*, people who they placed in the *Waqf* Board are people who are professionals in their respective fields. To facilitate its activities, the Egyptian *Waqf* Board also invite professionals beyond those already become administrators. Egyptian *Waqf* Board has the authority to manage and distribute the results of the management of those who

qualify as well as possible so that the *waqf* can work for the welfare of mankind.

In addition to Egypt, Saudi Arabia also has a kind of *Waqf* Board named Upper House *Waqf*. Supreme Council under the Ministry of Awqaf and *Waqf* Hajji. The authority of the High Council *Waqf*, among others, are developing a productive and distribute the *waqf* development to which they are entitled. In this connection, the High Council *Waqf* also have the authority to make charitable development programs, the survey of asset *waqf* as well as thinking about how management, determine the investment measures, and measures the development of another productive *waqf*, as well as publish the results of the development of *waqf* to the public.

In Sudan, the management of the Islamic *Waqf* Board working without any attachment to the Ministry of *Waqf*. The authority granted to the Islamic *Waqf* Board, among others, to curb *waqf* land and encourage *waqf* traditions for benefactors. Awakening *waqf* in Sudan overlooked again since 1991 because the Ministry provides several features to the *Waqf* Board, include the provision of a reserve fund for charitable institutions that manage projects of productive land good for agriculture, settlement, and trade center.

How about the Indonesian *Waqf* Board? In Article 47 paragraph (2) of Law No. 41 of 2004 concerning the *Waqf* stated that the Indonesian *Waqf* Board is an independent agency in carrying out its duties. The duties and authority of the Indonesian *Waqf* Board referred to in Article 49 paragraph (1). In the article, it is stated that the Indonesian *Waqf* Board has the duty and authority to : a. guide *Nazhir* in managing and developing the *waqf* property; b. undertake the management and development of *waqf* property national and international scale; c. approve and permit the change in designation and status of *waqf* property; d. remove and replace the *Nazhir*; e. approve the exchange of *waqf* property; f. provide advice and consideration to the Government in policy formulation in the field of *waqf*.

As for paragraph (2), The same article states that in carrying out the tasks referred to in paragraph (1) Indonesian *Waqf* Board may cooperate with Government agencies, both central and local, community organizations, experts, international agencies, and other parties deemed necessary. Article 50 states that in implementing the tasks referred to in Article 49, Indonesian *Waqf* Board heeds the advice and judgment of the Minister and the Indonesian Ulema Council.

Based on the Law on *Waqf*, the Indonesian *Waqf* Board (BWI) has the responsibility to develop *waqf* in Indonesia towards a productive era. This *waqf* can improve economic and general welfare. Apart from the existing shortage, according to the writer of Act 41 of 2004 About *Waqf* and Government Regulation No. 42 of 2006, as the *waqf* regulations in Indonesia is quite adequate. It is quite challenging to develop productive *waqf* in Indonesia. This is due to several things, among others, lack of public understanding of the *waqf*, including cash *waqf*.

Millions of our brothers live below the poverty line. The government has made great efforts to overcome our economy deteriorating, among others, by seeking foreign loan funds. Although we had quite a lot of debt, but the reality indicates that foreign loans and even then not be able to resolve various socioeconomic problems we face even economists suggest that the level of existing debt in Indonesia is estimated to have reached the stage of survival is very dangerous for the economy the Republic of Indonesia. It is estimated that these new debts paid off in the long term. Even then if not coupled with new debt. This will obviously complicate the lives of people, especially people living below the poverty line.

In such conditions, in fact, in addition to Islamic economic instruments such as zakat, infaq, alms, and others, there is one institution that is very potential to be developed, namely *waqf*, as *waqf* managed productively can help solve socio-economic problems of society. Designation and management of *waqf* in Indonesia were less lead to the economic empowerment of the people and tends only to the interests of specific religious activities is understandable, because there is generally a lack of understanding of the laws of Muslims *waqf*, for example, the property may be donated as *waqf*, *waqf*, and task allocation *nazhirwaqf*. In general, they understand that only a limited allotment of *waqf* for the benefit of special worship and the things that commonly implemented in Indonesia, such as for schools, mosques, prayer rooms, tombs, and others as to which has been mentioned.

For *waqf* in Indonesia to be able to empower the economy of the people, then in Indonesia, it is needed a new paradigm in the management of *waqf*, as well as socialized *waqf of money*. *Waqf* during this designation merely consumptive and managed traditionally, it is time productively managed *waqf*. *Waqf of money* is essential to be developed in Indonesia at the time of worsening economic conditions. Examples of successful implementation of cash *waqf* certificate (money) in Bangladesh can be an example for Muslims in Indonesia. If Muslims can implement it on a large scale, it will show the positive implications of the activities of the cash *waqf*. Cash *Waqf* has a unique opportunity for the creation of an investment in the fields of religion, education, and social services. Revenue earned from the management of the cash *waqf* can be spent on a variety of different purposes, such as for education, health, and for the maintenance of their property *waqf*. If there is a charitable organization that is able to manage the *waqf of money* professionally, then this institution is a new means for Muslims to charity. In this issue, Mustafa Edwin Nasution assumed that the number of the middle-class Muslim population in Indonesia as many as 10 million people with an average monthly income of between Rp. 500,000.00 (five hundred thousand dollars) - Rp. 10,000,000.00 (one million dollars), it can be made the following calculation:

Also, Nazhir, who manages *waqf* must be reliable, and for the management of cash *waqf* indeed require high technology weapons. As well as any of the legislation, if it is not accompanied by the ability of the human resources that are reliable, then the bill is to no avail. However, the authors believe that one day people will understand the various *waqf* issues. For the belief that the writer can be realized, then the socialization of Law Number 41 Year 2004 on *Waqf* and Government Regulation No. 42 of 2006 on the implementation of Law No. 41 of 2004 shall be appropriately performed.

E. Potential of *Waqf* in Indonesia

As an Islamic institution, *waqf* has become one of supporting the development of Islamic society. Most houses of worship, educational institutions, Islam, and Islamic religious institutions were built on *waqf* land. The number of *waqf* land in Indonesia is enormous/ much. According to data in the Ministry of Religious Affairs of the Republic of Indonesia, the current total number of donated land with an area of 366 595 locations 2,686,536,565.68 M2. If the number of donated land in Indonesia is linked to the country is currently facing a variety of crises, including the economic crisis *waqf* is one Islamic institution with huge potential to be developed to help the poor. Unfortunately, *waqf* that there were so many, in general, their use is wasteful and yet still managed productively.

A fact which shows that *waqf* in Indonesia is generally in the form of mosques, prayer rooms, madrasas, schools, cemeteries, houses orphans. In terms of social and economic, *waqf* that it is not yet able to play a role in tackling the problems of the people, especially the social and economic problems. This is understandable because of most of the existing *waqf* less than the maximum in its management. This condition is caused by circumstances *waqf* land quite narrow and only used for charitable purposes such as *waqif* who professed to mushalla and mosques without the accompaniment of land or objects that can be managed productively. Indeed there is *waqf* land that is wide enough, but because the nazhiris less creative, which allows managed land productively eventually not utilized at all, even for the care should look for donations from the public.

In Indonesia, it is tiny *waqf* land managed productively in the form of a business that the results can be used for parties who need them, including the poor. The utilization in terms of social, especially for religious purposes, is effective, but its impact is a less positive influence in the economic life of society. If the *waqf* allocation is limited to things above not being offset by *waqf* that can be managed productively, then the *waqf* as one means to achieve the socio-economic welfare of society, will not be realized optimally.

As we perceive together that the economic conditions in Indonesia today is very worrying.

- a. If the Muslims who earn Rp. 500,000.00 amounted to 4 million people each year, and each donates *waqf* as much as Rp 60,000.00, then every year, the collected fund is Rp 240 Billion.
- b. If the people who earn Rp. 1 million - Rp. 2 million some 3 million people each year and each donates *waqf* Rp. 120,000.00, then every year collected funds of Rp. 360 Billion.
- c. If the people who earn Rp. 2 million - Rp. 5 million amounting to 2 million people each year, and each donate *waqf* Rp. 600,000.00, then every year collected funds of Rp. 1.2 trillion.
- d. If the people who earn Rp. 5 - Rp. 10 million the amount of 1 million people each year and each donates *waqf* Rp. Then every year, 1.2 million collected funds of Rp. 1.2 trillion.

Thus *waqf* collected during one year is Rp. 3 trillion. From the example above calculation, it appears that the success of the organization to mobilize the *waqf* fund will determine the benefits of the existence of the institution of *waqf*.

CONCLUSION

Waqf, in contemporary Indonesia, is in a unique situation. It is scattered around us, but people rarely see it. Most people also treat waqf only in the form of a land donation to build masjids, Islamic schools, or cemeteries. Whereas the history of waqf is quite long, even it has existed in Indonesia much longer than the independence of the Republic of Indonesia.

The abovementioned discussion shows the development of waqf is not limited only to land or building waqf, or immovable goods. The Law on Waqf in 2004 explicitly mentions the movable waqf, including cash waqf, securities of waqf, and so on.

Furthermore, among the goals of waqf is to empower people. Waqf Law 2004 support the productive management of *waqf*. Therefore, the existence of Waqf Law 2004 and the establishment of Indonesian *Waqf* Board (Badan Wakaf Indonesia – BWI) is blessing for this country.

Yet, amid of its enormous potentiality, waqf also meets some problems and challenges, namely, in order for *waqf* in Indonesia to be able to develop productively and capable of fighting against poverty, there must be a mutual commitment between the government, Indonesian *Waqf* Board, and the *Nazhir Waqf* developing *waqf* in accordance with existing laws and regulations. Both BWI and *Nazhir Waqf* must be professional and capable of developing waqf in more productive ways.

The waqf from movable goods must also be developed. Cash waqf and cash waqf linked Sukuk are two current development of waqf that fit Indonesian people and have an unequivocal potentiality to be developed.

Moreover, for *waqf* to run well and productive, educational institutions must do more studies and research on *waqf*. The Government and Indonesian *Waqf* Board are in need to obtain more constructive suggestions and enlightenments merely to develop better *waqf* policies for Indonesian people.

REFERENCES

Amin, Hasan 'Abdullah, 1989. *Idarah wa Tatsmir Mumtalakat al-Auqaf*, Jeddah: al-Ma'had al-Islamy li al-Buhus wa al-Tadrib al-Bank al-Islamy li Tanmiyyah.

Abdurrahman, 1979. *Masalah Perwakafan Tanah Milik dan Kedudukan Tanah Wakaf di Negara Kita*, Bandung: Alumnus.

Basyir, Ahmad Azhar, 1987. *Hukum Islam tentang Wakaf, Ijarah dan Syirkah*, Bandung: Al-Ma'arif.

Daud Ali, Mohammad, 1988. *Sistem Ekonomi Islam, Zakat dan Wakaf*, Jakarta: UI Press, Departemen Agama, 1992. *Kompilasi Hukum Islam Indonesia*, Direktorat Pembinaan Badan Peradilan Agama. .

Hazairin, 1983. *Demokrasi Pancasila*, Jakarta: Bina Aksara.

Jumhuriyyah Misr al-'Arabiyyah, 1993. *Qawanin al-Auqaf wa al-Hikr wa Qararat al-Tanfiziyyah*, Cayro: Al-Haiah al-'Ammah li Syuun al-Matabi al-Amiriyyah, 1993.

Ahmad, Khurshid (ed.), 1983. *Pesan Islam*, diterjemahkan oleh Achsin Muhammad, Bandung: Pustaka.

Kahf, Mundzir, 2005. *Manajemen Wakaf Produktif*, diterjemahkan oleh Muhyiddin Mas Rida, Jakarta: Khalifa (Pustaka al-Kautsar Grup).

Khallaf, Abdul Wahhab, 1951. *Ahkam al-Waqf*, Mesir: Mathba'ah al-Misr..

Kubaisyi, 1977. Muhammad 'Ubaid 'Abdullah, *Ahkam al-Waqf fi Syari'at al-Islamiyyah*, Jilid II, Baghdad: Mathba'ah al-Irsyad. .

Saifuddin, Ahmad M., *Studi Nilai-nilai Sistem Ekonomi Islam*, Jakarta: Media Dakwah, 1984.

Shan'any, Muhammad Ibn Isma'il, 1990. *Subul al-Salam*, Muhammad Ali Sabih, t. t. Juz III.

Sutarmadi, Muhda Hadisaputra dan Amidhan, *Pedoman Praktis Perwakafan*, Jakarta: Badan Kesejahteraan Masjid.

Syaukani, Muhammad bin Ali bin Muhammad, *Nail al-Authar*, Mesir: Musthafaal-Babi al-Halaby, t.t. Jilid IV.

Zuhaily, Wahbah, *Fiqh al-Islamy wa Adillatuhu*, Mesir: Dar al-Fikri, t.t. Juz VIII.

Undang-Undang Republik Indonesia Nomor 41 Tahun 2004 Tentang Wakaf.

Peraturan Pemerintah Nomor 42 Tahun 2006 Tentang Pelaksanaan Undang-undang Nomor 41 Tahun 2004.